

1 A As I said, I looked at schedule A,
2 and I looked at the total number of
3 subscribers that were being comported --

4 Q I'm sorry, you're not answering my
5 question.

6 A I didn't look specifically at the
7 system-by-system on schedule A --

8 Q Did you check whether Baltimore --

9 JUDGE SIPPEL: Did you get your
10 answer to your question?

11 MR. TOLLIN: No, I did not.

12 BY MR. TOLLIN:

13 Q Did you check whether Baltimore
14 was included in the system on schedule A?

15 A I don't remember if I specifically
16 looked at Baltimore. I looked across the --

17 JUDGE SIPPEL: That's okay.

18 That's your answer.

19 BY MR. TOLLIN:

20 Q Did you look to see whether
21 Washington was covered?

22 A I don't remember if I specifically

1 looked.

2 JUDGE SIPPEL: That's it.

3 BY MR. TOLLIN:

4 Q That's it. Thank you. Are you
5 aware of any cable companies that carry MASN
6 to some, but not all their systems within
7 MASN's territory?

8 JUDGE SIPPEL: Listen to the
9 question and answer the question. Yes, you
10 are or no, you're not.

11 THE WITNESS: Yes, I am aware that
12 there are some affiliates of ours that don't
13 carry us to all of their subscribers.

14 BY MR. TOLLIN:

15 Q Which are they?

16 A I don't know all of them. The
17 ones that I can remember right now are [REDACTED]
18 doesn't carry us to all of their systems, yes,
19 all of their systems. And I think [REDACTED].

20 Q Any others?

21 A Not that I can remember right now.

22 Q Did you participate in the MASN

1 negotiations with [REDACTED]?

2 A Yes, I did.

3 Q In 2005?

4 A Yes, I did.

5 Q What reason did [REDACTED] give you
6 for not wanting to launch MASN on all systems?

7 A What I remember is that they --
8 the individual who we were negotiated with and
9 I can't remember his name. I'm sorry right
10 now, stated that they -- there was certain --
11 that he had talked to some of their managers'
12 assistants and they said that they couldn't
13 launch MASN. I don't know -- I don't remember
14 specifically what the reason was. I just
15 don't remember.

16 Q Do you remember whether there were
17 valid business considerations?

18 A What do you mean by valid?

19 Q Was it price? Was it bandwidth?
20 Was it --

21 A It could have been those. I just
22 don't remember.

1 Q Okay.

2 JUDGE SIPPEL: Well, it wasn't
3 anything that prompted filing a complaint with
4 the FCC?

5 THE WITNESS: We did not, that I
6 know of, file a complaint to the FCC.

7 JUDGE SIPPEL: Well, you would
8 know. That was not even considered in that
9 situation, was it?

10 THE WITNESS: No. We --

11 JUDGE SIPPEL: They satisfied you.
12 They gave you some kind of satisfactory
13 answer.

14 THE WITNESS: Right. They told us
15 they're going to launch these and they're not
16 going to launch these.

17 JUDGE SIPPEL: And the only
18 explanation you would accept would be some
19 kind of a business reason. They couldn't say
20 because we wanted that spot and we don't want
21 you to have it.

22 MR. TOLLIN: That's right.

1 JUDGE SIPPEL: Go ahead.

2 MR. TOLLIN: The [REDACTED]
3 identified all systems that would not carry
4 MASN.

5 THE WITNESS: Yes, that's what I
6 remember, yes.

7 BY MR. TOLLIN:

8 Q So these facts were well known by
9 you and MASN executives.

10 A Yes. They told us which systems
11 they disclosed to us which systems they
12 weren't going to launch us on.

13 Q Who is Mike Haley?

14 A Mike Haley is an employee of MASN.

15 Q Who is John Angelos?

16 A John Angelos is I think -- I'm not
17 sure what his title is. He's right now
18 running as the General Manager of MASN.

19 Q Is he the son of Peter Angelos?

20 A Yes, he is.

21 MR. TOLLIN: Can I approach?

22 JUDGE SIPPEL: Yes, sir.

1 MR. TOLLIN: Thank you.

2 (Pause.)

3 BY MR. TOLLIN:

4 Q Okay, have you ever seen this
5 email from Mike Haley to John Angelos?

6 JUDGE SIPPEL: Is this in the
7 record, yet? It is.

8 MR. TOLLIN: It is.

9 JUDGE SIPPEL: Thank you, sir.
10 This is Comcast 53.

11 MR. TOLLIN: Right.

12 JUDGE SIPPEL: This is also highly
13 confidential. Is there any concern with the
14 questions coming?

15 MR. TOLLIN: Good question. I
16 think --

17 MR. FREDERICK: Well, we don't
18 know what you're going to ask.

19 JUDGE SIPPEL: Let's go -- be
20 careful about how you ask --

21 THE WITNESS: I'm not familiar
22 with this email.

1 JUDGE SIPPEL: All right, for
2 starts, he's not familiar.

3 MR. TOLLIN: It's going to be hard
4 to do.

5 JUDGE SIPPEL: Why don't we just
6 ask -- excuse --

7 MR. TOLLIN: Just for a second
8 anyway.

9 JUDGE SIPPEL: Let's go off the
10 record for just a minute.

11 (Off the record.)

12 BY MR. TOLLIN:

13 Q Do you see the last paragraph of
14 the email in summary?

15 A Okay.

16 Q Can you read that for me, that
17 sentence in the -- at least the sentence
18 fragment next to it?

19 A Okay. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] We need to find out

1 exactly how this occurred and determine what
2 plan is to compel [REDACTED] subscribers.

3 Total unlaunched subscribers represent
4 potential annual revenue [REDACTED]

5 Q Can you explain to me what's
6 happening here?

7 A This is the first time I've ever
8 seen this. And I'm not sure what Mike Haley's
9 -- why he's come to these conclusions. This
10 is the first I've ever seen this.

11 Q Is that right? So you didn't know
12 that somehow [REDACTED] of [REDACTED]
13 subscribers were left out of the --

14 A I don't know if this [REDACTED] is
15 right or not. I can't remember how many subs
16 were actually left out of [REDACTED]

17 Q It's clear though the executives
18 didn't know that [REDACTED] was left out,
19 right?

20 A This is the first time I ever have
21 seen this. I know the executives knew that we
22 had cut a deal with [REDACTED] that excluded --

1 Q Did you think [REDACTED] was left
2 out?

3 A Like I said, I don't know what the
4 number is.

5 Q But I mean when you said they
6 disclosed to you all of the exclusions, did
7 you think at that point that anything like [REDACTED]
8 [REDACTED] was being excluded?

9 A Like I said, I don't have the
10 information in front of me that would tell me
11 if this number is correct or not. I would
12 have to see the actual information to be able
13 to determine if this is correct or not. I
14 don't know if what he is saying is correct or
15 not.

16 JUDGE SIPPEL: Who is Mr. --

17 BY MR. TOLLIN:

18 Q I'm not asking -- I'm asking you
19 did you believe when you did the [REDACTED] deal
20 that [REDACTED] of the subscribers were left
21 out?

22 Yes or no.

1 A No.

2 Q You did not think so?

3 A I don't think so, but again, I
4 would need to see the affiliate agreement and
5 look at what we had on that. I can't remember
6 exactly what the percentage was.

7 Q But you don't believe it was in
8 the neighborhood of [REDACTED]

9 A What I testified to is I don't
10 have the information in front of me, so I'm
11 not sure what the percentage was.

12 Q Do you think these executives in
13 your company were surprised to hear about [REDACTED]
14 [REDACTED]?

15 A It's the first time I've seen
16 this. I'm not sure what was going on here.
17 As far as I know, everyone that was involved
18 with the [REDACTED] negotiation understood that
19 they weren't going to launch all of their
20 systems.

21 Q [REDACTED]

22 A I said I'm not sure what the

1 percentage is. I'd have to take a look at the
2 agreement.

3 Q But if they were okay with the [REDACTED]
4 [REDACTED], why are they seeking to compel
5 carriage?

6 A I don't, like I said, this is the
7 first time I've ever seen this. I don't know.
8 Maybe Mike Haley was confused on what was
9 included and within our territory with
10 Charter. I have no idea. That's the first
11 time I've ever seen this.

12 No one ever -- no one discussed
13 this with me.

14 Q What percent of carriage did you
15 negotiate?

16 A I don't remember.

17 Q Under 50 percent?

18 A I don't remember.

19 JUDGE SIPPEL: Just tell me who
20 Mike Haley is?

21 THE WITNESS: Mike Haley is an
22 employee of MASN and I'm not sure -- I think

1 his title is CFO, Executive CFO.

2 BY MR. TOLLIN:

3 Q In your written testimony of
4 paragraph four, can we go back to that?

5 (Pause.)

6 You state in paragraph four that--

7 JUDGE SIPPEL: Do you want this
8 gentleman back in here?

9 MR. TOLLIN: Yes, Your Honor.

10 BY MR. TOLLIN:

11 Q You state in paragraph four that
12 "it is my understanding that MLB allocate
13 television territories deemed based on its
14 determination about the team in which fans in
15 that territory are most likely to show
16 interest." Correct?

17 A Yes.

18 Q What is the basis for your
19 understanding regarding MLB territories being
20 set according to demand?

21 A I've been in the business for a
22 considerable amount of time. I'm familiar

1 with MLB television territories. So my
2 understanding is they were based on fan
3 interest.

4 Q Okay, excuse me for just one
5 second. Before we take up this MLB line of
6 questions I just want to ask you one further
7 question about [REDACTED] This would be on the
8 COM 53-2 page. If you would look at the
9 bottom of that page. Second page.

10 A Okay.

11 Q It says at the bottom, "you and I
12 should have a call with Wyche on Monday."
13 This is again referring to the [REDACTED]
14 problems "or whenever he returns to discuss
15 [REDACTED] and also the commercial hospitality
16 accounts issue and we were never able to
17 discuss two weeks ago."

18 A Yes.

19 Q Does that refresh your
20 recollection at all?

21 A No. I don't remember.

22 Q Okay. Let's go back to MLB. So

1 what is your personal understanding of Demand
2 being hooked up with the creation of MLB
3 territories?

4 A My understanding it's based on fan
5 interest.

6 Q And what is that understanding
7 based on?

8 A Based on my experience in the
9 business for over 20 years.

10 Q And what is that experience that
11 leads you to believe that?

12 A That the territories, the way
13 they're divided up and the way the teams are -
14 - some teams have exclusive territories. It's
15 my understanding it's based on fan interest.

16 Q Understanding, but what
17 methodology?

18 A I don't know what the methodology
19 is exactly that MLB used.

20 Q How about inexactly? Do you know
21 inexactly what they used?

22 A I don't know exactly or inexactly

1 the type of methodology they used.

2 Q Do you know if they use a
3 methodology?

4 A I'm assuming they use some
5 criteria to come up with these territories and
6 my understanding it's based on fan interest.

7 Q Assuming, you assume?

8 A I believe.

9 Q You believe from what?

10 A My experience in the business.

11 Q And are you aware of any survey or
12 empirical data from MLB that underlines,
13 underlies the establishment of these
14 television territories?

15 A I'm not -- I don't know what the
16 methodology is or criteria that they used.

17 Q Didn't the Nationals recently have
18 their area assigned to them based on a
19 contract with Peter Angelos?

20 A My understanding is that the
21 Nationals, when the Montreal Expos moved into
22 D.C., they were given the same television

1 territories, yes.

2 Q And so was that based on a demand
3 survey?

4 A I don't know what the survey was
5 that MLB conducted.

6 Q Do you know if they did anything?

7 A I don't know what MLB did.

8 Q So is it your understanding that
9 was based just on a contractual understanding?

10 A It was my understanding that they
11 were granted the same television territory as
12 the Baltimore Orioles.

13 Q Do you think it's a coincidence
14 that they were granted the same territory
15 based on demand studies?

16 A I don't know what demand studies
17 were done. As I answered, I don't know what
18 demand studies in Major League Baseball did.

19 Q So you believe that's likely due
20 to an agreement?

21 A It could be. All I know is they
22 were granted the same television territory.

1 Q So do you have any factual basis
2 to give us for your statement that the MLB
3 territories correspond with fan demand?

4 A Yes. Based on my experience in
5 the business, and working for multiple teams
6 and understanding how the territories -- I
7 know where territories are, how they're split
8 up, that it's based on fan interest.

9 Q I didn't hear any factual basis.
10 Do you have any factual basis?

11 A I've been in the business for a
12 long time and my understanding is and my
13 belief is it's based on fan interest.

14 MR. TOLLIN: Excuse me.

15 JUDGE SIPPEL: Yes, sir.

16 BY MR. TOLLIN:

17 Q Did Comcast add MASN to any system
18 not listed in the carriage agreement after the
19 carriage agreement was signed?

20 A My understanding is that they did.

21 Q Do you which systems?

22 A I don't recollect right now which

1 systems those are.

2 Q But you do recollect that they
3 added systems not included in schedule A?

4 A Yes.

5 Q And that would have been under the
6 "at discretion clause"?

7 A I don't know if it came under that
8 or not.

9 Q What else would it come under?

10 A I just know they added us. I'm
11 not sure if it comes underneath that clause or
12 not.

13 Q What was the post agreement after
14 the August 4th agreement was signed? What
15 were the post agreement discussions about
16 between MASN and Comcast? Weren't you a party
17 to those discussions?

18 A When you mean post agreements, can
19 you explain a little bit more what you mean?

20 Q After the agreement was signed in
21 January, you testified that you found out
22 that some markets weren't included.

1 A Yes.

2 Q And that sparked some discussions,
3 didn't it, with Comcast?

4 A Yes, it did.

5 Q That you were a party to?

6 A Yes, I was.

7 Q What were those discussions
8 largely about?

9 A About the unlaunched systems that
10 we had discovered, MASN had discovered there
11 were some unlaunched systems that we assumed
12 they had launched us on and that was -- that
13 was the stimulus of those conversations and
14 then that produced Exhibit 71.

15 Q And what was MASN's position in
16 those discussions?

17 A Our position was that we believed
18 that the bargain that we had was that they
19 were to launch us on all of their systems
20 except the Adelphia one, 150,000.

21 Q And so what did you demand?

22 A We asked them -- we'd like to get

1 launched on all the systems and as I stated
2 before, the first conversation I think was
3 with Mr. Dannenbaum and he said he'd get back
4 to us. Eventually, we had a meeting in
5 Philadelphia.

6 Q Okay, so you thought the
7 discussions then and am I properly summarizing
8 your testimony, you thought the discussions
9 were essentially about the missing markets
10 from the contract?

11 A They were about the missing
12 markets
13 in the contract, and then when we were
14 developing Exhibit 71, we also were able to
15 see that a lot of the Adelphia systems were at
16 750, in other words --

17 Q Those were the missing markets
18 from the contract, right? Adelphia.

19 A Well, not just the Adelphia.
20 There was also non-Adelphia systems that were
21 missing too that we didn't know.

22 Q Basically, the lower bandwidth

1 systems that you're talking about?

2 A The lower bandwidth systems with
3 respect to Adelphia, they were lower
4 bandwidth.

5 MR. TOLLIN: No more questions,
6 Your Honor.

7 JUDGE SIPPEL: Okay. Does the
8 Bureau have questions?

9 MS. MUMAW: No, we don't, Your
10 Honor.

11 JUDGE SIPPEL: No questions.

12 MR. FREDERICK: I have a few
13 redirect questions.

14 JUDGE SIPPEL: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. FREDERICK:

17 Q Mr. Wyche, I believe you testified
18 about the rate changing with respect to the
19 Orioles. Can you explain for the Court how
20 MASN's rate started in 2005 and then changed
21 once the Orioles became part of the network
22 programming?

1 A Well, I don't have the specific
2 rates in front of me, but what it reflects is
3 that when we first launched we only had
4 Nationals for two years because we didn't have
5 the rights to the Orioles. They were still on
6 CSMNA.

7 So when those rights became
8 available, then we started televising Orioles
9 exclusively. And then the rate went up to
10 reflect that.

11 JUDGE SIPPEL: Is that exclusively
12 or I thought that was in conjunction with the
13 Nationals?

14 THE WITNESS: We had exclusive
15 rights to televise Orioles and the Nationals.
16 But when we first launched in '05, when first
17 MASN launched in '05, we only had the
18 Nationals for the first two years.

19 JUDGE SIPPEL: Right, okay. Fine.
20 I just want to be sure I got it.

21 BY MR. FREDERICK:

22 Q Now you remember that Mr. Tollin

1 asked you a number of questions about whether
2 you've seen documents showing discrimination
3 by Comcast. Do you recall those questions
4 that he asked you?

5 A Yes, I recall that.

6 Q Did you see any of the thousands
7 of documents Comcast produced that were
8 stamped confidential in this litigation?

9 A No. I didn't see them. If I
10 wasn't supposed to see them, I didn't see
11 them.

12 Q Have you signed a protective order
13 in this case?

14 A No, I have not.

15 Q When the Judge asked you about
16 what he called extended inter-market teams,
17 could you describe for the Court how many
18 teams, Major League Baseball has and
19 approximately where they're located and what
20 states they represent generally?

21 A It's in my testimony that there's
22 30 Major League Baseball teams and they're

1 physically in 17 states. And so it's not
2 uncommon for a state that does not have a
3 baseball team, based on fan interest, the
4 territories are split up to reflect that.

5 JUDGE SIPPEL: Like in Northern
6 Delaware, the Phillies or something like that?

7 THE WITNESS: Yes, and some of the
8 territories are shared with other teams. For
9 example, in Harrisburg, they're shared
10 territories. Harrisburg/Lancaster.

11 BY MR. FREDERICK:

12 Q Mr. Tollin asked you a number of
13 questions about the discretion language, do
14 you recall those questions?

15 A Yes, I do.

16 Q Do you recall an email from
17 Comcast on August 4th to MASN transmitting the
18 revised term sheet?

19 A Yes, I do.

20 Q Do you recall what that email said
21 roughly?

22 A It basically said -- it's the

1 deals that have been discussed, have been
2 discussing.

3 Q And those discussions were oral
4 with Comcast?

5 A Yes.

6 Q So in the course of that
7 discussion came the Roanoke/Lynchburg Adelphia
8 discussion is that correct?

9 A Right, correct.

10 Q Did Comcast identify any
11 impediment to launch other than the low
12 bandwidth of the Roanoke/Lynchburg subset
13 identified?

14 A No, they did not.

15 Q Were you aware at that time that
16 Comcast had represented to the SCC that it had
17 intended to spend millions of dollars
18 upgrading Adelphia systems?

19 A Yes, I was aware --

20 MR. TOLLIN: Objection, Your
21 Honor. There's nothing in the record that
22 Comcast made that representation.